

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

SAM CEASARIO,

Plaintiff,

v.

NANCY A. BERRYHILL, Acting
 Commissioner of Social Security
 Administration,

Defendant.

Case No. 2:18-cv-00336-JAD-CWH

REPORT AND RECOMMENDATION

This matter was referred to the undersigned magistrate judge for a report of findings and recommendations under 28 U.S.C. § 636(b)(1)(B)-(C) and Local Rule IB 1-4. The case involves review of an administrative action by the Commissioner of Social Security (“Commissioner”) denying Plaintiff Sam Ceasario’s (“Plaintiff”) application for disability insurance benefits under Titles II and XVI of the Social Security Act. The court has reviewed Plaintiff’s motion to remand (ECF No. 18), filed October 3, 2018, and the Commissioner’s response and cross-motion to affirm (ECF No. 25), filed January 17, 2019. Plaintiff did not file a reply.

I. BACKGROUND

1. Procedural History

On August 28, 2012, Plaintiff applied for disability insurance benefits and supplemental security income under Titles II and XVI of the Act, alleging an onset date of May 9, 2006. AR¹ 348, 350-357. Plaintiff’s claim was denied initially, and on reconsideration. AR 213-223, 224. A

¹AR refers to the Administrative Record in this matter. (Notice of Manual Filing (ECF No. 14).)

1 hearing was held before an Administrative Law Judge (“ALJ”) on May 17, 2017. AR 53-89.¹ On
2 August 14, 2017, the ALJ issued a decision finding Plaintiff was not disabled. AR 22-52. The
3 ALJ’s decision became the Commissioner’s final decision when the Appeals Council denied
4 review. AR 2-7. Plaintiff, on February 22, 2018, commenced this action for judicial review
5 under 42 U.S.C. §§ 405(g). (See ECF Nos. 1, 4.)

6 **2. The ALJ Decision**

7 The ALJ followed the five-step sequential evaluation process set forth in 20 C.F.R.
8 §§ 404.1520 and 416.920. AR 26-27. At step one, the ALJ found that Plaintiff had not engaged
9 in substantial gainful activity from the amended alleged onset date of September 17, 2011. AR
10 27. At step two, the ALJ found that Plaintiff had the following medically determinable “severe”
11 impairments: mild degenerative joint disease of the right knee, status post left clavicle fracture,
12 depressive disorder not otherwise specified, degenerative changes to the lumbosacral spine, and
13 morbid obesity as a secondary factor considered under SSR 02-1p. *Id.* At step three, the ALJ
14 found that Plaintiff did not have an impairment or combination of impairments that met or
15 medically equaled a listed impairment in 20 CFR Part 404, Subpart P, Appendix 1. AR 29. At
16 step four, the ALJ found that the claimant has the residual functional capacity (“RFC”) to perform
17 lifting up to 20 pounds occasionally and 10 pounds frequently, except he would be further limited
18 to: standing and walking up to 4 hours of an 8 hour day; sitting up to 6 hours of an 8 hour day;
19 with no direct overhead reaching bilaterally; no climbing of ladders, ropes or scaffolds; frequent
20 balancing; occasional stooping, kneeling, crouching, crawling and climbing stairs or ramps; and ,
21 occasional exposure to extremes of cold, vibration and hazards (i.e. heights and dangerous
22 moving machinery). As a result of mental impairment, he would further be limited to:
23 understanding, carrying out, and remembering simple instructions, using simple judgment,
24 making simple work-related decisions, in a work setting with no more than occasional changes in
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27 ¹ A hearing was previously held on October 2, 2014 by a different ALJ, but the unfavorable decision was
28 vacated, and the case remanded for an additional hearing. AR 25.

1 routine, to perform simple work tasks with no more than brief and superficial interactions with
2 the public, and occasional interaction with co-workers and supervisors. AR 30.

3 The ALJ found that Plaintiff is unable to perform his past relevant work as a taxicab
4 driver because it exceeds his RFC. AR 43. The claimant was born on March 7, 1968 and was 43
5 years old, which is defined as a younger individual age 18-49, on the alleged disability onset date.
6 *Id.* The claimant has a high school education and is able to communicate in English. *Id.*
7 Transferability of job skills is not material to the determination of disability, because using the
8 Medical-Vocational Rules as a framework supports a finding that the claimant is “not disabled,”
9 whether or not he has transferable job skills. *Id.* Considering the claimant’s age, education, work
10 experience and RFC, there are jobs that exist in significant numbers in the national economy that
11 he is able to perform, according to the vocational expert. AR 44. Accordingly, the ALJ
12 concluded that Plaintiff was not under a disability at any time from the amended alleged onset
13 date of September 17, 2011, through the date of the decision. AR 45.

14 **II. DISCUSSION**

15 **1. Standard of Review**

16 Administrative decisions in social security disability benefits cases are reviewed under 42
17 U.S.C. § 405(g). *See Akopyan v. Barnhart*, 296 F.3d 852, 854 (9th Cir. 2002). Section 405(g)
18 states: “Any individual, after any final decision of the Commissioner of Social Security made
19 after a hearing to which he was a party, irrespective of the amount in controversy, may obtain a
20 review of such decision by a civil action . . . brought in the district court of the United States for
21 the judicial district in which the plaintiff resides.” The court may enter “upon the pleadings and
22 transcripts of the record, a judgment affirming, modifying, or reversing the decision of the
23 Commissioner of Social Security, with or without remanding the cause for a rehearing.” *Id.* The
24 Ninth Circuit reviews a decision affirming, modifying, or reversing a decision of the
25 Commissioner de novo. *See Batson v. Comm’r*, 359 F.3d 1190, 1193 (9th Cir. 2004).

26 The Commissioner’s findings of fact are conclusive if supported by substantial evidence.
27 *See* 42 U.S.C. § 405(g); *Ukolov v. Barnhart*, 420 F.3d 1002 (9th Cir. 2005). However, the
28 Commissioner’s findings may be set aside if they are based on legal error or not supported by

1 substantial evidence. *See Stout v. Comm’r, Soc. Sec. Admin.*, 454 F.3d 1050, 1052 (9th Cir.
 2 2006); *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002). The Ninth Circuit defines
 3 substantial evidence as “more than a mere scintilla but less than a preponderance; it is such
 4 relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”
 5 *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995); *see also Bayliss v. Barnhart*, 427 F.3d
 6 1211, 1214 n.1 (9th Cir. 2005). In determining whether the Commissioner’s findings are
 7 supported by substantial evidence, the court “must review the administrative record as a whole,
 8 weighing both the evidence that supports and the evidence that detracts from the Commissioner’s
 9 conclusion.” *Reddick v. Chater*, 157 F.3d 715, 720 (9th Cir. 1998); *see also Smolen v. Chater*, 80
 10 F.3d 1273, 1279 (9th Cir. 1996).

11 Under the substantial evidence test, findings must be upheld if supported by inferences
 12 reasonably drawn from the record. *Batson*, 359 F.3d at 1193. When the evidence will support
 13 more than one rational interpretation, the court must defer to the Commissioner’s interpretation.
 14 *See Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005); *Flaten v. Sec’y of Health and Human*
 15 *Serv.*, 44 F.3d 1453, 1457 (9th Cir. 1995). Consequently, the issue before the court is not whether
 16 the Commissioner could reasonably have reached a different conclusion, but whether the final
 17 decision is supported by substantial evidence. It is incumbent on the ALJ to make specific
 18 findings so that the court does not speculate as to the basis of the findings when determining if the
 19 Commissioner’s decision is supported by substantial evidence. Mere cursory findings of fact
 20 without explicit statements as to what portions of the evidence were accepted or rejected are not
 21 sufficient. *Lewin v. Schweiker*, 654 F.2d 631, 634 (9th Cir. 1981). The ALJ’s findings “should
 22 be as comprehensive and analytical as feasible, and where appropriate, should include a statement
 23 of subordinate factual foundations on which the ultimate factual conclusions are based.” *Id.*

24 **2. Disability Evaluation Process**

25 The individual seeking disability benefits has the initial burden of proving disability.
 26 *Roberts v. Shalala*, 66 F.3d 179, 182 (9th Cir. 1995). To meet this burden, the individual must
 27 demonstrate the “inability to engage in any substantial gainful activity by reason of any medically
 28 determinable physical or mental impairment which can be expected . . . to last for a continuous

1 period of not less than 12 months.” 42 U.S.C. § 423(d)(1)(A). More specifically, the individual
2 must provide “specific medical evidence” in support of her claim for disability. 20 C.F.R.
3 § 404.1514. If the individual establishes an inability to perform her prior work, then the burden
4 shifts to the Commissioner to show that the individual can perform other substantial gainful work
5 that exists in the national economy. *Reddick*, 157 F.3d at 721.

6 The ALJ follows a five-step sequential evaluation process in determining whether an
7 individual is disabled. *See* 20 C.F.R. § 404.1520; *Bowen v. Yuckert*, 482 U.S. 137, 140 (1987). If
8 at any step the ALJ determines that he can make a finding of disability or nondisability, a
9 determination will be made and no further evaluation is required. *See* 20 C.F.R. §
10 404.1520(a)(4); *Barnhart v. Thomas*, 540 U.S. 20, 24 (2003). Step one requires the ALJ to
11 determine whether the individual is engaged in substantial gainful activity (“SGA”). 20 C.F.R. §
12 404.1520(b). SGA is defined as work activity that is both substantial and gainful; it involves
13 doing significant physical or mental activities usually for pay or profit. *Id.* § 404.1572(a)-(b). If
14 the individual is engaged in SGA, then a finding of not disabled is made. If the individual is not
15 engaged in SGA, then the analysis proceeds to the step two. Step two addresses whether the
16 individual has a medically determinable impairment that is severe or a combination of
17 impairments that significantly limits her from performing basic work activities. *Id.*
18 § 404.1520(c). An impairment or combination of impairments is not severe when medical and
19 other evidence establishes only a slight abnormality or a combination of slight abnormalities that
20 would have no more than a minimal effect on the individual’s ability to work. *Id.* § 404.1521; *see*
21 *also* Social Security Rulings (“SSRs”) 85, 96-3p, and 96-4p.² If the individual does not have a
22 severe medically determinable impairment or combination of impairments, then a finding of not
23 disabled is made. If the individual has a severe medically determinable impairment or
24 combination of impairments, then the analysis proceeds to step three.

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26 ² SSRs constitute the SSA’s official interpretation of the statute and regulations. *See Bray v. Comm’r of*
27 *Soc. Sec. Admin.*, 554 F.3d 1219, 1224 (9th Cir. 2009); *see also* 20 C.F.R. § 402.35(b)(1). They are
28 entitled to some deference as long as they are consistent with the Social Security Act and regulations.
Bray, 554 F.3d at 1223 (finding ALJ erred in disregarding SSR 82-41).

1 Step three requires the ALJ to determine whether the individual's impairments or
2 combination of impairments meet or medically equal the criteria of an impairment listed in 20
3 C.F.R. Part 404, Subpart P, Appendix 1. 20 C.F.R. §§ 404.1520(d), 404.1525, and 404.1526. If
4 the individual's impairment or combination of impairments meet or equal the criteria of a listing
5 and the duration requirement (20 C.F.R. § 404.1509), then a finding of disabled is made. 20
6 C.F.R. § 404.1520(h). If the individual's impairment or combination of impairments does not
7 meet or equal the criteria of a listing or meet the duration requirement, then the analysis proceeds
8 to step four.

9 Before moving to step four, however, the ALJ must first determine the individual's
10 residual functional capacity ("RFC"), which is a function-by-function assessment of the
11 individual's ability to do physical and mental work-related activities on a sustained basis despite
12 limitations from impairments. *See* 20 C.F.R. § 404.1520(e); *see also* SSR 96-8p. In making this
13 finding, the ALJ must consider all the relevant evidence, such as all symptoms and the extent to
14 which the symptoms can reasonably be accepted as consistent with the objective medical
15 evidence and other evidence. 20 C.F.R. § 404.1529; *see also* SSRs 96-4p and 96-7p. To the
16 extent that statements about the intensity, persistence, or functionally limiting effects of pain or
17 other symptoms are not substantiated by objective medical evidence, the ALJ must make a
18 finding on the credibility of the individual's statements based on a consideration of the entire case
19 record. The ALJ must also consider opinion evidence in accordance with the requirements of 20
20 C.F.R. § 404.1527 and SSRs 96-2p, 96-5p, 96-6p, and 06-3p.

21 Step four requires the ALJ to determine whether the individual has the RFC to perform
22 her past relevant work ("PRW"). 20 C.F.R. § 404.1520(f). PRW means work performed either
23 as the individual actually performed it or as it is generally performed in the national economy
24 within the last 15 years or 15 years before the date that disability must be established. In
25 addition, the work must have lasted long enough for the individual to learn the job and performed
26 a SGA. 20 C.F.R. §§ 404.1560(b) and 404.1565. If the individual has the RFC to perform her
27 past work, then a finding of not disabled is made. If the individual is unable to perform any PRW
28 or does not have any PRW, then the analysis proceeds to step five.

1 The fifth and final step requires the ALJ to determine whether the individual is able to do
2 any other work considering her RFC, age, education, and work experience. 20 C.F.R.
3 § 404.1520(g). If she is able to do other work, then a finding of not disabled is made. Although
4 the individual generally continues to have the burden of proving disability at this step, a limited
5 burden of going forward with the evidence shifts to the Commissioner. The Commissioner is
6 responsible for providing evidence that demonstrates that other work exists in significant numbers
7 in the national economy that the individual can do. *Yuckert*, 482 U.S. at 141-42.

8 **3. Analysis**

9 The ALJ found that, after considering the evidence of record, claimant's medically
10 determinable impairments may not reasonably be expected to produce the alleged symptoms, and
11 consequently, his allegations concerning the intensity, persistence, and limiting effects of these
12 symptoms are not reasonably consistent with the objective evidence and other evidence, in
13 consideration of the record in its entirety. AR 30. Plaintiff moves to remand this matter because
14 the ALJ failed to articulate clear and convincing reasons for rejecting Plaintiff's testimony.
15 Plaintiff argues that he testified regarding the nature and extent of his condition, and the ALJ
16 provided insufficient reasons to reject his testimony, and instead set forth boilerplate language in
17 making his credibility determination. The Commissioner responds that the ALJ set forth
18 sufficient reasons to reject Plaintiff's testimony, including some without objection from the
19 Plaintiff.

20 The Commissioner's regulations prohibit granting disability benefits based solely on a
21 claimant's subjective complaints. *See* 20 C.F.R. § 404.1529(a) ("statements about your pain or
22 other symptoms will not alone establish that you are disabled."). "An ALJ cannot be required to
23 believe every allegation of [disability], or else disability benefits would be available for the
24 asking, a result plainly contrary to [the Social Security Act]." *Fair v. Bowen*, 885 F.2d 597, 603
25 (9th Cir. 1989). If the ALJ rejects the claimant's complaints, the ALJ must provide "specific,
26 cogent reasons for the disbelief." *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995) (quoting
27 *Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9th Cir. 1990)).
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1 The ALJ must state why the testimony is unpersuasive and must point to what specific
 2 testimony or evidence undermines the claimant's testimony. *Morgan v. Comm'r of Soc. Sec.*
 3 *Admin.*, 169 F.3d 595, 599 (9th Cir. 1999); *Lester*, 81 F.3d at 834. Absent affirmative evidence
 4 that the claimant is malingering, the ALJ's reasons for rejecting the claimant's testimony must be
 5 clear and convincing. *Valentine v. Comm'r Social Sec. Admin.*, 574 F.3d 685, 693 (9th Cir.
 6 2009). The ALJ "may not reject a claimant's subjective complaints based solely on a lack of
 7 medical evidence to fully corroborate the alleged severity of pain." *Burch v. Barnhart*, 400 F.3d
 8 676, 680 (9th Cir. 2005). This is because the lack of an objective medical basis is just one factor
 9 in evaluating the credibility of a claimant's testimony and complaints. *Bunnell v. Sullivan*, 947
 10 F.2d 341, 345 (9th Cir. 1991) (en banc).

11 The Ninth Circuit has upheld an ALJ's finding that a claimant's testimony is not credible
 12 when the ALJ cited specific instances in the record supporting this determination. *See, e.g.,*
 13 *Parra v. Astrue*, 481 F.3d 742, 750 (9th Cir. 2007) (upholding ALJ's credibility determination
 14 when he pointed out numerous lab results that contradicted his subjective complaints). *See also,*
 15 *Batson*, 359 F.3d at 1196-97 (ALJ's credibility determination upheld because the ALJ cited
 16 specific testimony from a doctor which contradicted the claimant's allegations). But the Ninth
 17 Circuit has also found general findings insufficient. *See Robbins v. Social Sec. Admin.*, 466 F.3d
 18 880, 884-85 (9th Cir. 2006) (ALJ required to provide a "narrative discussion" and state specific
 19 evidence in the record supporting an adverse credibility finding). If "evidence can support either
 20 affirming or reversing the ALJ's decision," this Court may not substitute its judgment for that of
 21 the ALJ's. *Id.* at 882.

22 In making a credibility determination regarding pain, the ALJ may consider:

- 23 1. [t]he nature, location, onset, duration, frequency, radiation, and intensity of any
- 24 pain; 2. [p]recipitating and aggravating factors (e.g., movement, activity,
- 25 environmental conditions); 3. [t]ype, dosage, effectiveness, and adverse side
- 26 effects of any pain medication; 4. [t]reatment, other than medication, for relief of
- 27 pain; 5. [F]unctional restrictions; and 6. [t]he claimant's daily activities[.]

27 along with "ordinary techniques of credibility evaluation." *Bunnell*, 947 F.2d at 346 (citing SSR
 28 88-13).

1 Plaintiff first argues that it was improper for the ALJ to find that the testimony is not
2 credible because it lacks support in the objective medical evidence. The ALJ may use objective
3 evidence to assess the intensity and persistence of claimant's symptoms and how they may limit the
4 ability to work. *See* 20 C.F.R. § 404.1529(c)(2)&(4); *Morgan v. Comm'r of Soc. Sec. Admin.*, 169
5 F.3d 595, 602-603 (9th Cir. 1999) (the ALJ properly discounted the claimant's subjective allegations
6 by citing the conflict between his subjective complaints and the objective medical evidence). Here,
7 the ALJ discussed medical evidence that did not corroborate the degree of pain and limitations
8 Plaintiff alleged and revealed a level of functioning consistent with the RFC for light work. AR
9 30-43. *See* 20 C.F.R. § 404.1529(c)(2)&(4); *Stubbs-Danielson v. Astrue*, 539 F.3d 1169, 1175
10 (9th Cir. 2008) (affirming adverse credibility finding in part because the claimant's alleged
11 symptoms were "disproportionate and not supported by the objective medical findings nor any
12 other corroborating evidence"). The ALJ thoroughly explained that the treatment records failed to
13 document the kind of objective findings to support the severity and extent of Plaintiff's subjective
14 claims. AR 30-43. For example, the ALJ noted that throughout most of the record, aside from
15 intermittent findings, such as tenderness and reduced range of motion, the objective examinations
16 usually found normal muscle strength, sensory functions, and/or no focal neurological defect. AR 42.
17 The ALJ also discussed that while Plaintiff's lumbar pathology progressed, there was no "clinical
18 evidence of muscle wasting, sustained motor loss or muscular atrophy in the entire record to support
19 any significant loss of functioning over time." AR 43.

20 The ALJ noted that the independent orthopedic consultant Dr. Cestowski's actual examination
21 findings did not provide objective evidence supporting Plaintiff's extensive claims, and did not
22 support increased functional limits or the extent of Plaintiff's claims. AR 36. State agency doctors
23 who reviewed the record in 2013, Judith Vgoelsamg, D.O. and Judy Panek, M.D., both opined
24 Plaintiff could perform a range of light work, including lifting and carrying up to 20 pounds
25 occasionally. The ALJ gave significant weight to the State agency doctors' opinions and partial
26 weight to Dr. Cestowski's opinion. AR 36-37, 41. Plaintiff fails to address these findings.
27 Opinions of consultative examiners and State agency doctors constitute substantial evidence in
28 support of an ALJ's residual functional capacity finding. *See Stubbs-Danielson*, 539 F.3d at

1 1174. Additionally, the ALJ noted that that not one doctor opined he had disabling functional
2 limitations. AR 42-43. *See* 20 C.F.R. § 404.1529(c)(4); *Carmickle v. Comm’r of Soc. Sec.*, 533 F.3d
3 1155, 1161 (9th Cir. 2008) (ALJ can reject subjective symptom allegations for being inconsistent with
4 medical opinions). *See* 20 C.F.R. § 404.1529; *Maier v. Comm’r of Soc. Sec.*, 154 F.3d 913, 915
5 (9th Cir. 1998) (“The ALJ’s explanation that [the claimant] was not credible was supported by the
6 clear and convincing reason that [the claimant’s] testimony contradicts most of the medical
7 evaluations.”).

8 Second, Plaintiff argued that the ALJ’s consideration of his daily activities was not a valid
9 reason to reject his testimony, and that nothing in Plaintiff’s description of his limitations
10 demonstrate that he is capable of maintaining substantial gainful work activity. The ALJ may
11 consider Plaintiff’s reported and demonstrated activities to determine whether his symptoms are as
12 limiting as he alleges. *See* 20 C.F.R. § 404.1529(c)(3)(i); *Valentine v. Astrue*, 574 F.3d 685, 694 (9th
13 Cir. 2009) (the ALJ properly determined that the claimant demonstrated better capabilities than he
14 reported to the agency; the claimant “exercised and undertook several projects after he retired,
15 including gardening and community activities.”). Here, the ALJ noted that Plaintiff engaged in
16 various sword-fighting and fencing events, Renaissance fair reenactments, computer repair work,
17 leatherwork for his mother’s business, and driving to Disneyland three times a year to increase the
18 leather business, which reasonably suggests that Plaintiff was not as limited as he claimed. AR 31,
19 39, 40, 42.

20 The ALJ discussed Plaintiff’s activities of daily living which demonstrated a greater range
21 of functioning than Plaintiff alleged. AR 31. *See* 20 C.F.R. § 404.1529; *Tommasetti v. Astrue*,
22 533 F.3d 1035, 1039 (9th Cir. 2008) (“The ALJ may consider many factors in weighing a
23 claimant’s credibility,” including “the claimant’s daily activities.”).

24 Plaintiff testified that he was generally independent for dressing and eating, and engaged in a
25 broad range of daily activities with little difficulty. The ALJ found that his activities of being able to
26 shop, maintain adequate mathematical functioning to manage bank accounts, prepare simple meals,
27 do some household chores, socialize with friends and family, and participate in hobbies such as sword
28 fighting, reading, and playing Dungeons and Dragons, are not consistent with total disability. AR 31.

1 *See Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001) (“The ALJ also pointed out ways in
2 which [claimant’s] claim to have totally disabling pain was undermined by her own testimony about
3 her daily activities, such as attending to the needs of her two young children, cooking, housekeeping,
4 laundry, shopping, attending therapy and various other meetings every week”). Plaintiff
5 acknowledged he felt comfortable lifting and carrying about 20 pounds, consistent with the ALJ
6 limiting him to the same. *See* AR 81. It was not improper for the ALJ to consider Plaintiff’s daily
7 activities in arriving at his credibility determination.

8 Third, Plaintiff argues that the ALJ referred to his only receiving routine care, which was
9 not accurate. In response, the Commissioner acknowledges that in this case Plaintiff’s various
10 modalities of treatment, which include both narcotic medications and use of epidurals, were not
11 conservative and routine, and the court agrees. *See Tunstall v. Astrue*, No. CV 11-9462-SP, 2012
12 WL 3765139, at *4 (C.D. Cal. Aug. 30, 2012) (rejecting the ALJ’s adverse credibility finding on
13 the basis that plaintiff received only conservative treatment because “she has used narcotic pain
14 medication”). Use of epidurals are not a conservative course of treatment. *See Hydat Yang*
15 *v. Colvin*, No. CV 14-2138-PLA, 2015 WL 248056, at *6 (C.D. Cal. Jan. 20, 2015) (“This Court
16 has previously found that spinal epidural injections are *not* ‘conservative’ treatment.” (emphasis
17 added)). Based upon the Commissioner’s concession, the ALJ erred when he justified his
18 credibility decision based upon Plaintiff receiving only routine care.

19 The Commissioner argues that the ALJ provided other reasons, which Plaintiff does not
20 contest, to support his credibility decision. The ALJ properly discounted Plaintiff’s subjective
21 allegations by noting his pain decreased with treatment. AR 32-33. *See* 20 C.F.R. § 404.1529(c)(3).
22 Generally, “[i]mpairments that can be controlled effectively with medication are not disabling for the
23 purpose of determining eligibility for [disability] benefits.” *Warre v. Comm’r of Soc. Sec.*, 439 F.3d
24 1001, 1006 (9th Cir. 2006). The ALJ extensively described Plaintiff’s positive response to lumbar
25 steroid injections, pain medication, and his doctor’s decision to continue his medication regime,
26 indicating Plaintiff found his treatment reduced his pain. AR 32-33, 34-35.

27 The Commissioner also argues that the ALJ reasonably cited Plaintiff’s ability to work
28 during the time he claimed he was disabled suggested Plaintiff was not as functionally limited as he

1 alleged. AR 42. *See* 20 C.F.R. § 404.1529(a) (in assessing symptom supportability, the agency
2 considers the claimant's "ability to work"); *Greger v. Barnhart*, 464 F.3d 968, 972 (9th Cir. 2006)
3 (claimant's symptoms not supported where he told the Veterans Administration that he did carpentry
4 work "under the table" well after his date last insured). Despite testifying that he last worked in 2006
5 driving a cab, in 2013, Plaintiff told Dr. Doncaster that he was currently fixing computers as a form of
6 self-employment.

7 Additionally, the Commissioner argues that it is reasonable to infer that the ALJ believed that
8 Plaintiff's lack of candor undermined his claim of disabling symptoms. The court agrees -- the ALJ
9 discussed in detail that the psychological examiner, Dr. Doncaster, found that Plaintiff displayed an
10 inconsistent effort upon examination, inconsistencies between his reports and test results, and
11 ultimately found Plaintiff presented as less able than he actually is. AR 37-40.

12 Accordingly, the ALJ restricted Plaintiff to a range of light work in recognition that his
13 impairments caused some functional limitations, and provided clear and convincing reasons for
14 rejecting the claimant's testimony that he was disabled. AR 30; *Valentine*, 574 F.3d at 693. The
15 ALJ's credibility analysis was supported by substantial evidence, and it is entitled to great
16 deference. *See Parra*, 481 F.3d at 750 (questions of credibility and resolution of conflicts in the
17 testimony are functions solely for the agency).

18 **IV. CONCLUSION AND RECOMMENDATION**

19 Accordingly, IT IS HEREBY RECOMMENDED that Plaintiff's motion to remand (ECF
20 No. 18) be DENIED.

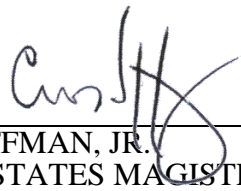
21 IT IS FURTHER RECOMMENDED that the Commissioner's cross-motion to affirm
22 (ECF No. 25) be GRANTED.

23 **V. NOTICE**

24 This report and recommendation is submitted to the United States district judge assigned
25 to this case under 28 U.S.C. § 636(b)(1). A party who objects to this report and recommendation
26 may file a written objection supported by points and authorities within fourteen days of being
27 served with this report and recommendation. Local Rule IB 3-2(a). Failure to file a timely
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1 objection may waive the right to appeal the district court's order. *Martinez v. Ylst*, 951 F.2d
2 1153, 1157 (9th Cir. 1991).

3 DATED: July 30, 2019

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5 C.W. HOFFMAN, JR.
6 UNITED STATES MAGISTRATE JUDGE
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